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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 118 OF 1997

WITH

FIRST APPEAL NO. 119 OF 1997

WITH

FIRST APPEAL NO. 120 OF 1997

WITH

FIRST APPEAL NO. 121 OF 1997

WITH

FIRST APPEAL NO. 122 OF 1997

WITH

FIRST APPEAL NO. 123 OF 1997

WITH

FIRST APPEAL NO. 124 OF 1997

WITH

FIRST APPEAL NO. 125 OF 1997

WITH

FIRST APPEAL NO. 126 OF 1997

WITH

FIRST APPEAL NO. 127 OF 1997

WITH

FIRST APPEAL NO. 128 OF 1997

WITH

FIRST APPEAL NO. 129 OF 1997

Union of India ..Appellants

versus

Prime Solvent Extractions Ltd. ..Respondents

Mr. A. N. Samant for the Appellants.

None for the Respondents.

CORAM : D. G. DESHPANDE,J.

DATE : 20TH APRIL,2005

ORAL ORDER :

1. All the Appeals have been filed by the Union of India. Though Respondents in all the Appeals are common i.e. Prime Solvent Extractions Ltd. nobody is present for them, therefore I heard Mr. Samant for the Appellants only.

2. Mr. Samant made two submissions, firstly, according to him all the Receipts or Railway Receipts were to the effect *"said to contain"* and therefore it was the responsibility of the respondents to prove as to what material and how much material was loaded by them in particular wagon and since the respondents have not discharged that burden, they were not entitled to any claim from the railway. Secondly and alternatively he contended that on the basis of the Judgment of this Court reported in 2005(1) Mh.L.J. 165 Maharashtra State Electricity Board vs. Union of India, the interest rate awarded by the Tribunal should be reduced to 9% per annum.

3. Since in all the appeals, common questions

involve, as stated above, I will refer to the facts of one appeal only i.e. First Appeal No. 118 of 1997 wherein the Respondents discharged on 8.8.1994 consignment of 1560 bags of Soya De-Oiled cakes booked from Parasia to Wadi Bunder under RR No. 151738. The consignment when reached destination was found damaged and it was got assessed and the Railway issued certificate without prejudice. Thereafter, the Respondents served claim notice for the estimated delivery and railways paid Rs.9168/- on 17.10.1995 as against the claim of Rs.17,371/-. The respondents accepted the cheque under protest and towards part payment and informed the appellants accordingly by their letter dated 18.10.1995. Thereafter respondents filed claim petition, which was decreed by the Tribunal and hence this Appeal.

4. Mr. Samant contended that when the Railway Receipt is issued as "said to contain", then the burden or proving the exact quantity of bags lies on the respondents and unless that burden is discharged, railways cannot be made liable. In fact from the documents and evidence on record, viz. Exhibit R1 R/2 and R/3, it is clear that the consignment was booked at Railway Risk Rate and it was 1560 bags of Soya De-oiled Cakes total weighing 1006.20 qtls. Therefore, RR not only giving the number of the bags but also the total weight of all

the bags. Point relating to "said to contain" does not appear to have been raised by the appellants before the Tribunal. When the goods reached destination they were found to be damaged and the damage was also assessed as per the damage assessment certificate Exhibit A/7 and railway has made partial payment of the claim. The payment was accepted under protest and then claim petition came to be filed before the Tribunal by the respondents. Therefore, this is a case where the respondents had proved by documentary evidence as to what was the quantity of the bags entrusted to the railways for transport. The quantity being given in weight also and also the number of bags despatched and in how may bags and as to what extent they were damaged, is also brought on record and the damage assessment certificate and the evidence clearly prove these facts. Therefore, firstly the defence of "said to contain" is not available and secondly even if it is available the same is required to be rejected because the facts can be ascertained from the aforesaid documentary evidence. It is not the case of the railways that all the goods were loaded in the wagon under the supervision and control only of the respondents, upon which the Railways had no control. It is not that in railway receipt quantity i.e. number of bags or the weight of the bag is given approximately, but specific details in this

regard have been mentioned there in the RR including the date, and also the damage assessment certificate supports the case of the respondents. Therefore, so far as first aspect is concerned, there is no merit and that contention is required to be rejected.

5. The Tribunal however at the time of passing of the award or judgment awarded interest at the rate of 12% per annum from the date of application till payment. Mr. Samant rightly relied upon the judgment of this Court reported in **2005(1) Mh. L. J. 165 Maharashtra State Electricity Board vs. Union of India,** which I have followed earlier in many matters, therefore this prayer regarding interest is to be accepted. Therefore, I pass the following order

ORDER

. All the Appeals are partly allowed. Interest awarded to the Respondents is reduced to 9% per annum. No order as to costs so far as these Appeals are concerned.

20.04.2005 (D.G. DESHPANDE, J.)